

TIMOTHY EDWARD MONTE

IBLA 81-764

Decided July 29, 1981

Appeal from decision of the Idaho State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. I MC 19941 through I MC 19945.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Notice: Generally -- Regulations: Generally -- Statutes

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

3. Mining Claims: Assessment Work

The filing of evidence of annual assessment work in a county recording office does not constitute compliance with the recordation requirements of 43 CFR 3833.2-1.

APPEARANCES: Timothy Edward Monte, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Timothy Edward Monte appeals the decision of the Idaho State Office, Bureau of Land Management (BLM), dated June 5, 1981, which declared the unpatented Pauline, Monte, Monte #1, Timmie M, and Sunny Day placer mining claims, I MC 19941 through I MC 19945, abandoned and void for failure to submit evidence of annual assessment work on or before December 30, 1980, pursuant to section 314, Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and its implementing regulations, 43 CFR 3833.2-1(a) and 3833.4(a).

The claims in this case were located between 1945 and 1962. A copy of the notice of location for each claim was filed with BLM on September 14, 1979, together with proof of 1979 assessment work. No evidence of assessment work for 1980 was filed with BLM on or before December 30, 1980.

Appellant states that the claims have been held and worked for many years, with the annual notice of assessment work performed being filed for record in Owyhee County, Idaho, and that the failure to record the 1980 assessment work with BLM was an oversight.

[1] Section 314, FLPMA, requires the owner of an unpatented mining claim to file with BLM each calendar year after recordation of the claim with BLM a notice of intent to hold the claim or proof of the assessment work for the year on or before December 30. Failure to so file is statutorily considered conclusively to constitute abandonment of a claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4. See Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

When appellant failed to file timely a notice of intent to hold or proof of assessment work performed in 1980, BLM properly held the claims to have been abandoned and void. Robert R. Eisenman, 50 IBLA 145 (1980).

[2] The fact that appellant may have been unaware of the recordation requirements, while unfortunate, does not excuse him from compliance. Those who deal with the Government are presumed to have knowledge of the law and the regulations duly promulgated pursuant thereto. 44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978). The responsibility for complying with the recordation requirements rested with appellant. This Board has no authority to excuse lack of compliance. Lynn Keith, *supra*; A. J. Grady, 48 IBLA 218 (1980); Glen J. McCrorey, 46 IBLA 355 (1980).

[3] Accomplishment of a proper state or county recording does not relieve appellant from filing with BLM under the requirements of FLPMA or the implementing regulations. What 43 CFR 3833.4(b) says is

that a defective or untimely state or county filing does not, of itself, constitute a failure to file under FLPMA. Neither does a valid or timely filing with a state or county constitute a FLPMA filing. These are two separate filing requirements and compliance with one does not constitute compliance with the other.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

